

FAX FOR IMMEDIATE DELIVERY

TO: Helen Harrington, IWRB (fax: 208-287-6700)

FROM: Bill Jones, TSWUA (Fax: 208-837-4808)

DATE: 7 May 2008

3 pages (including cover)

Helen,

Please see that the following letter gets to the State Water Planning subcommittee prior to their Friday, May 9th meeting in Twin Falls.

Thank you!

6 May 2008

Mr. Vic Armacost
Mr. Leonard Beck
Mr. Gary Chamberlain
Idaho Water Resource Board
State Water Plan Subcommittee

RE: Draft language in Section 5G- Snake River Basin Springs

Dear Members of the State Water Plan Subcommittee,

This letter is jointly submitted on behalf of the memberships of both the Thousand Springs Water Users Association and the Idaho Aquaculture Association. Both organizations represent spring users in the Magic Valley who depend on spring flows to support a variety of business ventures including agriculture, aquaculture, recreation, hunting and fishing, and tourism industries, as well as protecting wildlife and providing for domestic uses.

Section 5G of the 15 March 2008 draft states, "*It must be recognized that future management and climate conditions may reduce present spring flows and while existing water rights are protected, it may be necessary to construct different diversion facilities than presently exist.*" We find this sentence particularly objectionable for a number of reasons, and strongly suggest that you delete the entire sentence from the updated state water plan.

First, we strongly object to any "future management ... conditions" that "may reduce present spring flows". The Draft plan states on page 1, "...future development must be guided by the State Water Plan". We view any management conditions that purposely reduce spring flows for the benefit of future, and as yet unidentified, uses to be equivalent to a takings of our adjudicated water rights and do not believe the Idaho Water Resource Board has the legal authority to require any water user, be it surface or ground, to change his existing diversion structures simply to accommodate a management plan.

Furthermore, this statement is inconsistent with other statements made on page 1 of the Draft that justify the purpose for the Idaho Water Resource Board and this guiding document. For example, "*The Idaho Water Resource Board shall, subject to legislative approval, progressively formulate, adopt and implement a comprehensive state water plan for conservation, development, management and optimum use of all unappropriated water resources and waterways of this state in the public interest.*" The spring water rights referenced above are not unappropriated.


Also on page 1 of the Draft, *"The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes."*

Again, any attempt to regulate the already appropriated non-power beneficial uses of spring water is beyond the scope of this guiding document.

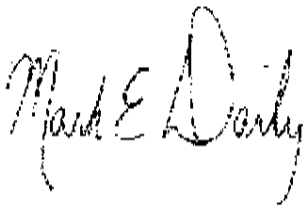
Finally, on page 3 of the Draft, *"This Plan continues to evolve as an instrument in the adoption and implementation of policies, projects, and programs that develop, utilize, conserve, and protect the state's water supplies"*. A plan that exchanges one water source for another does not protect the State's water supplies. It is premature to issue a State Water Plan that identifies only one segment of stakeholders as being subject to the need for different diversion facilities as a result of future management. The State Water Plan should not be eliminating any options that will help the aquifer recover. If different diversion facilities would be helpful for spring users then they would likely be a helpful tool for ground water and other surface water users as well. A State Water Plan that appears to favor one segment of stakeholders at the expense of another will only create an atmosphere of distrust and implies that the state has predetermined that all tools available to protect state water supplies will not be seriously considered.

We appreciate the considerable time and effort you have put into updating the State Water Plan - a daunting task few others would want to tackle. However, our organizations stand prepared to actively oppose changes to the State Water Plan that discriminate against our member's water rights.

Sincerely,



John W. "Bill" Jones, Jr.,
President, TSWUA



Mark E. Daily,
President, IAA

Idaho Aquaculture Association Inc., PO Box 767, Hagerman, ID 83332, email: iaa@northrim.net
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May 2, 2008

Mr. Gary Chamberlain
Mr. Vic Armacost
Mr. Leonard Beck
Idaho Water Resource Board
State Water Plan Subcommittee

RE: Proposed 5G- Snake River Basin Springs

Dear Mr. Chamberlain and members of the State Water Plan Subcommittee:

I am unable to attend the next meeting of the water plan subcommittee so am providing this letter to alert you to our strong opposition to a provision in the current (3/15/08) draft of the State Water Plan. As currently constructed, item 5G- SNAKE RIVER BASIN SPRINGS (page 21 of 25) is unacceptable to us.

Item 5G states in part "It must be recognized that future management and climate conditions may reduce present spring flows and while existing water rights are protected, it may be necessary to construct different diversion facilities than presently exist." If future management of the aquifer results in further decline in the ESPA then the State has failed miserably in its attempt to restore the health of the aquifer. This would also mean the CAMP process had failed. Why should the State Water Plan pre-suppose such failure? Further, it is unclear what "future management" would include. For example if it were to mean administrative actions which violated state law or circumvented priority administration, that definition would be unacceptable. Moreover, rights should be protected based upon priority. Additionally, to our knowledge there is no existing State authority to require senior water users to change their diversion structures to accommodate aquifer management. A State Water Plan does not provide legal authority to do so. Such a statement also appears to exceed authority of the Board to develop a plan for "unappropriated" waters of the State. Most spring water rights were established well before the first State Water Plan was developed so would not be subject to a plan dealing with unappropriated waters. Such was the conclusion of Justice Gerald Schroeder in a recently completed administrative hearing. Additionally, such provision is discriminatory since other water users are not similarly identified as potentially needing to change their diversions to accommodate aquifer management or climate change. Why not include provision to curtail ground water pumping to accommodate aquifer management and climate change? On its face it appears to be an attempt by the State to obtain authority it does not have statutorily or to further enable ground water pumpers to delay action on their part to fully mitigate for their depletionary impacts on the aquifer.

In previous discussion with the Water Planning Subcommittee I had requested reference to spring flows and Swan Falls (Policy 1H) be deleted. That appears to have been accomplished and I thank you. I am asking that language in the plan suggesting that spring diversions may need alteration to accommodate future management and climate conditions similarly be eliminated.

We will strongly oppose the State Water Plan if item 5G remains as currently construed or if similar language is included. I will be glad to discuss further as appropriate.

Additionally, in reviewing the agenda for your sub-committee it appears that Mr. Ron Carlson is appearing on behalf of IGWA. I question his place on the agenda without notice to other stakeholders or the opportunity to present on matters of interest to them. Mr. Carlson's interests or impartiality must be assessed. At a minimum Clear Springs would request an opportunity to present on matters of concern in proposed amendments to the Plan.

Sincerely,

John R. MacMillan

John R. MacMillan, Ph.D.
Vice President

cc: Larry Cope, President